



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking for the Purpose  
of Amending General Order 156.

Rulemaking 06-04-011  
(Filed April 13, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING  
RE INTERVENOR COMPENSATION AND OTHER MATTERS**

I have received a written communication concerning the issues in this proceeding from Asian, Inc., the existing contractor administering verification functions under General Order (GO) 156. So that all parties have this information, a copy of the written communication is attached to this ruling (Attachment A).

Several of the parties to this proceeding have asked for a copy of the existing contract between the Commission and Asian, Inc. The contract is a public document and has been provided to me by staff. I have e-mailed a copy of the existing contract to all persons on the service list who have provided the Commission with an e-mail address. If other parties desire a copy, please send me a request, either by e-mail ([jet@cpuc.ca.gov](mailto:jet@cpuc.ca.gov)) or regular mail. In your request, please provide your address or e-mail address.

Although the Order Instituting Rulemaking (OIR) in this proceeding anticipates the issuance of a scoping memo, I will now prepare a draft decision for the Commission's consideration, in which the Commission will be asked, among other things, to waive the scoping issue requirement. However, intervenors must be provided an opportunity to indicate any intent to claim

compensation in this proceeding. Pursuant to Public Utilities Code Section 1804 and Rules of Practice and Procedure 76.74(a), any notice of intent to claim intervenor compensation must be filed and served by Friday, June 23, 2006. Any response to a notice of intent to claim compensation must be filed by Friday, June 30, 2006.

**IT IS SO RULED.**

Dated June 13, 2006, at San Francisco, California.

/s/ JOHN E. THORSON

John E. Thorson  
Administrative Law Judge

Attachment A  
(Dated May 26, 2006)

Judge Thorson:

This is a copy of the comments I submitted to the commissioners and the docket office. I apologize for the lateness - I learned only today that the case had been assigned to you. I hope it's not too late for consideration.

- David Moulton  
Clearinghouse Director

To: CPUC Commissioners  
Via E-mail

**Ref: Proposed modification of GO 156**

ASIAN, Inc. has been the operator of the CPUC's Supplier Clearinghouse since 1997. We comment on the proposed modification of GO 156 to change the program administration, and are submitting it to the Docket Office and each of the commissioners. While we support the modification, we have concerns as to how it should be implemented.

The Clearinghouse's mission is to verify bona fide woman and minority business enterprises and to exclude those who do not meet the guidelines. Regrettably, there are firms owned and controlled by non-minority males that attempt to gain certification by a cosmetic reconfiguration of titles or nominal ownership, or by more complex and sophisticated schemes directed toward the same end.

There are also firms that are eligible on their face but are in fact so dependent on a non-WMBE entity as to be incapable of existing on their own. Finally, in some firms the control is genuinely shared between minorities or women and non-minority males, and primary control is not readily discernible.

The Clearinghouse operator must make an accurate determination. Certifying ineligible firms is unfair to the genuine WMBEs who have encountered discrimination or other barriers in conducting their business. It is also unfair to the non-minority male firms that compete on their own merits and do not seek to gain an undeserved advantage.

There are two contradictions built into the system. One is that denials of certification almost always require more time and effort than approvals. That is especially true when the denied applicant submits a protest, which must be answered. Since the Clearinghouse operator receives the same fee for either a certification or a denial – with nothing extra for analyzing a protest - there is an economic incentive to verify. It is necessary to build

a contingency for denials and protests into the fee, making the program substantially more expensive than it would be if all applications were simply accepted at face value.

Second, the utilities are caught between supporting the spirit of the program and maximizing the volume of procurement through WMBEs. Although they are in general supportive, we have encountered more than a few occasions where utilities have implied to us that they would be very happy if we could certify a certain supplier.

For the above reasons, we want to make two recommendations. One is that **the fee for a determination should not be reduced to the point where the decision to verify or deny is based on economic considerations rather than the merits of the applicant.**

Second, if administration of the program is shifted to a utility-controlled entity, there should be no diminution in the quality of certification determinations. **In particular, the utilities should be completely insulated from having any influence on the decisions. The CPUC should monitor and retain control of the process, including the selection of any future operator.**

**(END OF ATTACHMENT A)**

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 13, 2006, at San Francisco, California.

/s/ ELVIRA NIZ

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Elvira Niz

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